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BIO-SCIENCES CORP.
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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

12 PETER JAY GERBER and MIRIAM
GOLDBERG,

13
14 Plaintiffs,

15 v.

16 BAYER CORPORATION AND
BAYER HEALTHCARE
17 PHARMACEUTICALS, INC.; BMC
DIAGNOSTICS, INC.; CALIFORNIA
PACIFIC MEDICAL CENTER;
18 GENERAL ELECTRIC COMPANY;
GE HEALTHCARE, INC.; GE
19 HEALTHCARE BIO-SCIENCES
CORP.; McKESSON
20 CORPORATION; MERRY X-RAY
CHEMICAL CORP.; and DOES 1
21 through 35

22 Defendants.
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CASE NO. CV-07-5918-JSW

**[PROPOSED] ORDER DENYING
PLAINTIFFS' MOTION FOR REMAND**

**[Submitted Pursuant to Civil Standing
Orders No. 9]**

[Jury Trial Demanded]

(San Francisco County Superior Court Case No.
CGC07468577)

24 Plaintiffs Peter Jay Gerber and Miriam Goldberg's ("Plaintiffs") Motion for
25 Remand ("Remand Motion") came on for hearing on January 11, 2008 before the Hon.
26 Jeffrey S. White of the above-entitled court. After considering the papers and hearing
27 argument of counsel, the Court **HEREBY DENIES** Plaintiffs' Remand Motion and finds
28 as follows:
4811-8308-2754.1

1 (1) This Court has jurisdiction pursuant to 28 U.S.C. 1441(b).

2 (2) The non-diverse Distributor Defendants McKesson Corporation and Merry
3 X-Ray Chemical Corp., and the non-diverse Facility Defendants BMC Diagnostics, Inc.
4 and California Pacific Medical Center were fraudulently joined. There is no reasonable
5 basis for any of Plaintiffs' claims against these defendants. (See *Maffei v. Allstate Ins.*
6 *Co.*, 412 F. Supp. 2d 1049, 1053 (E.D. Cal. 2006).)
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8 Alternatively, the Court **HEREBY DECLINES TO RULE** on Plaintiffs' Remand
9 Motion until decisions have been rendered on (1) the pending Motion to Transfer
10 Gadolinium-based contrast agent litigation to a Multi-District Litigation ("MDL") court,
11 which is currently set for hearing on the MDL Panel's January 30, 2008 docket; and (2) a
12 motion to transfer this action to the designated MDL court. Further, in the event this
13 action is transferred to an established MDL, this Court **DEFERS RULING** on the
14 Remand Motion to the designated MDL court. (See *Johnson v. Merck & Company*, 2007
15 WL 754882 (N.D.Cal).)
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17 **IT IS SO ORDERED.**

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UNITED STATES DISTRICT COURT
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[PROPOSED] ORDER DENYING PLAINTIFFS'
MOTION FOR REMANDCASE

NO. CV-07-5918-JSW